

The Latest Compliance Deadlines: Will the Enforcers Hit the Snooze Button?



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There is no guarantee that the federal government will grant any extensions on several important compliance deadlines that loom for health care providers. As the enforcement dates detailed below approach, it will be essential for hospitals, physician groups, solo physician practices and other health care providers to be aware of these fast-approaching deadlines and ensure compliance with the regulations.

- February 17, 2010 is the deadline related to the expanded portions of HIPAA implemented under the Health Information Technology for Economic and Clinical Health Act ("HITECH"), which was released as part of the Stimulus Bill. As you may know, the changes to HIPAA under HITECH strengthen enforcement, expand the potential penalties and impose new requirements on business associates.

Now is the time to learn about these changes and new requirements, notify your business associates of such changes, update business associate agreements, revise policies and notices as needed and train staff on the updates and changes. Our initial summary of the changes adopted under HITECH as part of the February 2009 Stimulus plan can be found at: www.trenam.com/subpages/health_care_reform.asp.

- On February 22, 2010, the FTC will begin enforcing the data breach notification rules applicable to personal health record vendors and related web-based businesses. The FTC has developed a standard form for the required notification of a breach: <http://www.ftc.gov/os/2009/08/R911002hbnform.pdf>
- February 22, 2010 is also the first day of full enforcement of the HIPAA security breach notification rules. HIPAA covered entities and business associates were required to comply with the data breach notification rules as of September 23, 2009, but HHS gave a grace period for enforcement that ends on February 22, 2010.

Instructions for submitting a notice to HHS can be found at: <http://www.hhs.gov/ocr/privacy/hipaa/administrative/breachnotificationrule/brinstruction.html> and our security breach decision chart can be found at: www.trenam.com/subpages/health_care_reform.asp.

- June 1, 2010 is the new deadline for the Red Flags Rule (the "Rule"), which requires "creditors" to implement written identity theft policies (the deadline for financial institutions passed in 2008). There has been a lot of recent debate about the applicability of the Red Flag Rules based in part on the lawsuit filed against the FTC by the American Bar Association alleging that a "creditor" cannot include professionals such as lawyers or healthcare providers. While a federal court exempted lawyers from the ambit of the Rule, the FTC has been clear that it still intends to require that health care providers comply with the Rule. Based on the impending deadline and the initial outcome of these disputes, it would be prudent for most health care providers to develop a simple identity theft program that complies rather than risk the \$3500 penalty after the aforementioned deadline. ■

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